IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/08/2002

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.7365 of 1999 and W.P.No. 17968 of 1999 and W.P.No. 17973 of 1999
and W.P.Nos.19965, 20483, 20484, 20498 of 1999,
4070 & 4080 of 2000

W.P. No.7365 of 1999

1. A.R. Lakshmanan
2. V.S. Bhat
3. P.R. Radhakrishnan .. Petitioners

-Vs-

Bank of Baroda
rep. by its Chairman &
Managing Director,
No.03, Walchand Hirachand Marg,
Ballard Pier,
Mumbai – 400 038. .. Respondent

Writ Petitions filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, as stated therein.

For petitioners : Mr.A.L.Somayajilu, Sr.Counsel, for
Mr.C.R. Chandrasekaran for
M/s.Aiyar and Dolia

^For respondent in
W.P.No.7365/1999 : Mr.Kannan for
M/s.Sampathkumar Associates.

For respondent in
all other W.Ps. : Mr.N.G.R.Prasad.

:COMMON ORDER

From among all the above thirteen writ petitions, though they have
been filed by different parties as petitioners, the respondent in W.P.

No.7365 of 1999 is the Bank of Baroda, wherein, in all other writ petitions, the respondent is one and the same, viz., the Indian Overseas Bank.

2. For easy reference, W.P.Nos.7365 of 1999, 17968 to 17973 of 1999 , 19965, 20483, 20484, 20498 of 1999, 4070 & 4080 of 2000 are hereinafter referred to as the first to thirteenth writ petitions and the petitioners therein as the first to thirteenth writ petitioners, respectively.

3. So far as the first writ petition above is concerned, it is filed by three petitioners, as against the Bank of Baroda, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the second proviso to Regulation 46 of Bank of Baroda Officers' Service Regulations 1979 as amended on 19.9.1996, quash the same and consequently direct the respondent to calculate the pay gratuity as paid to those officers, who retired on or after 1.11.1994.

4. So far as the other writ petitions are concerned, they are also praying for one and the same relief as extracted supra, but only with a change of date of amendment, which in the first writ petition has been made on 19.9.1996, whereas in the other writ petitions as 7.8.19 96. Therefore, as one and the same subject and prayer is involved in all the above writ petitions, they have all been heard together and this common order is passed.

5. In the affidavit filed in support of these writ petitions, which are common to all, the petitioners would submit that they joined the services of the respondent Banks and retired between 01.7.1993 and 3 1.10.1994, after putting in a continuous service of 29 to 48 years; that the respondent Banks are the undertakings of the Central Government as from 19.7.1969 in terms of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, and hence an instrumentality of the State; that the gratuity payable to the Officers in the respondent Bank insofar as the first writ petition above is in the following terms:

"1. Regulation 46 of Bank of Baroda Officers' Service Regulation, 197 9.

2. Bank of Baroda Gratuity Fund which is a Trust with particular reference to Rule 7 and Rule 12(1)(a) and Explanation II (1) to Rule 12 of its Rules and Regulations, and

3. Bank of Baroda Service Conditions of Officers as of 31.12.1969, which has been in existence for a long time for officers serving in the respondent Bank."

Whereas, the gratuity payable to the Officers in the respondent Bank, in respect of the other writ petitions, is in the following terms:

"1. Regulation 46 of the Indian Overseas Bank Officers' Service Regulation, 1979, and

2. Indian Overseas Bank Staff Gratuity Fund, which is a Trust, with

particular reference to Rule 28 and Rules 30 to 35 of its Rules."

6. The petitioners would further submit that as per the Gratuity Fund, the gratuity payable to Officers is one month's salary for each completed year of service, subject to a maximum of 15 months' salary together with an extra amount of gratuity at the rate of ½ month's salary for each completed year of service over 30 years; that the salary according to Rule 35(ii) of the Gratuity Fund Rules means, basic pay drawn on the last day preceding death, disability, retirement, resignation or termination of services, as the case may be; that Regulation No.46 of Officers' Service Regulations lays down, inter alia, that the amount of gratuity payable shall be one month's pay for every completed year of service subject to a maximum of 15 months' pay, provided that an officer is eligible by way of gratuity for an additional amount at the rate of ½ month's pay for each completed year of service beyond thirty years; that the petitioners have been paid the gratuity on the basis of their basic pay on the date of their retirement; that the above payment was made by the respondent Banks on the basis of the pre-revised pay (salary); that the Board of Directors of the respondent Banks adopted amendments to various Regulations of the Officers Service Regulations on 17.8.1996, which was gazetted on 7.12.1996 ; that Regulation No.4 of the Officers' Service Regulations relating to scales of pay was amended with retrospective effect from 1.7.1993.

7. It is further submitted that according to the amendment effected on 17.8.1996 and gazetted on 7.12.1996, adding second proviso to Regulation NO.46 of Officers' Service Regulations, pay for the purpose of gratuity for an officer who ceased to be in service during the period from 1.7.1993 to 31.10.1994 is to be with regard to scale of pay as specified in Sub-regulation (1) of Regulation No.4 thereof which was not the scale of pay drawn by them from 1.7.1993 and on such grounds, the petitioners would seek the relief extracted supra.

8. In the common counter filed on behalf of the respondent in the 2 nd to 13th writ petitions above, besides generally denying the various allegations contained in the writ petitions, the respondent Bank would specifically mention that the above writ petitions are not maintainable; that the petitioners in the above writ petitions have retired between 01.7.1993 and 31.10.1994 and have received their terminal benefits including gratuity without any protest as per the then existing Rules of the Bank and as per the terms and conditions of the salary settlement.

9. The respondent would further submit that the service regulation was amended by the Board of Directors of the respondent Bank, by resolution dated 17.8.1996 in consultation with the Reserve Bank of India and with previous sanction of the Union of India, and the petitioners have not impleaded the proper and necessary parties to the above writ petitions; that the gratuity was settled as per the salary revision agreement entered into between the Indian Banks' Association representing the Officers in which the petitioners are the members and the respondent management, which is binding on the petitioners, and hence, now they are estopped from challenging the impugned proviso after the receipt of the benefits.

10. The counter affidavit would further dissect the payer column of the writ petitions and would crave leave to state the circumstances leading to the inclusion of the second proviso of Regulation 46 of Indian Overseas Bank Officers' Service Regulations, 1979 and would state that the respondent Bank has come under the ownership of the Government of India as per the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970; that in all the nationalised Banks, the employees are categorised as workmen or award staff and officer employees; that while the service conditions of the award staff are being governed by the bipartite settlement between the Bank Employees Unions and the management, the service conditions of the office employees are governed by the service regulations which have been framed/ promulgated in exercise of the powers conferred by section 19 r/w. 12(2) of Act 1970; that in respect of the respondent Bank, the service regulation for Officers came into force on 1.7.1979; that Regulation 53 of the Service Regulations reads as,

"Any rules, regulation, order, agreement resolution or other instrument, or any usage custom, convention or practice, governing any matter dealt with in any of these regulations including allowances, perquisites and facilities, shall, on the date when such regulation comes into force and unless the contrary is provided in these regulations, shall cease to have effect in regard to such matter, provided that these shall not affect the validity of anything done or any claim arising prior to that date in pursuance of such agreement, rule, regulation, resolution, other provision or usage, custom, convention or practice."

that Regulation 46(2) lays down that,

"provided further that pay for the purpose of gratuity for an officer who ceased to be in service during the period 1.7.1993 to 31.10.1994 shall be with regard to scale of pay as specified in sub-regulation (1) of regulation 4."

that the computation of gratuity of Officers who were eligible during the period 1.7.1993 to 31.10.1994 is as per the pay drawn by them prior to revision of the scales of pay which came into effect on 1.7.19 93; that the respondent Bank fixed different cut-off dates for entitlement of various perquisites in pursuance of wage revision; that the salary revision came into effect after negotiation and settlement between the Indian Banks' Association and the Officers Association signing a joint note on 26.3.1995, as per which among other things, the impugned proviso was agreed upon between the parties, as per which, various cut-off dates were stipulated for payment of perquisites to the officers.

11. It would further be submitted that the petitioners retired from the respondent Banks between 1.7.1993 and 30.10.1994 and are eligible for gratuity as per the pre-revised scales; that the petitioners having accepted the benefits under the salary revision, have now challenged the amendment arising out of some settlement relating to the impugned proviso to Regulation 46 which defies the doctrine of election and estopes them from challenging one part of the settlement while accepting the other part; that having accepted an agreement in full without objections, a subsequent challenge to part of it, is not tenable in law and in this context, the respondent would extract the relevant portion of the judgment of the Apex Court delivered in State of Uttar

Pradesh VS. Uttar Pradesh University Colleges Pensioners' Unions reported in AIR 1994 SC 2311.

12. The counter affidavit would also extract a portion of the judgment of the Apex Court delivered in V.T.Khanzode and others VS. Reserve Bank of India and another reported in 1982 (1) LLJ 465; that the provisions made in the settlement/joint note are legal and proper and cannot be said to be arbitrary or illegal; that citing yet another judgment delivered in State of Rajasthan and another VS. Amritlal Gandhi and others reported in 1997 (II) SCC 342, the counter affidavit would end up saying that the writ petitions filed by the petitioners claiming enhanced gratuity is not tenable in law and they are bound by the provisions of the wage settlement.

13. During arguments, the learned counsel appearing on behalf of the petitioners, besides reiterating the facts and circumstances pleaded in the writ petitions, would further submit that the cut-off date for sanctioning the gratuity of revised scale would not be violative, thus redefining the salary based applicability; that the main reason alleged on the part of the respondent is that it involves financial constraints, and hence, they classified and applied the rules, which is not permissible in law.

14. On the other hand, the learned counsel appearing on behalf of the respondent, besides confirming the pleadings in their counter affidavit, would cite the following judgments in support of their case.
(i) STATE OF U.P. v. U.P. UNIVERSITY COLLEGES PETITIONERS' ASSOCIATION (AIR 1994 SC 2311),
(ii) HERBERTSONS LTD. v. WORKMEN (AIR 1977 SC 322),
(iii)SHITLA SHARAN SRIVASTAVA v. GOVT. OF INDIA {(2001) 6 SCC 106), and

(iv) STATE OF WEST BENGAL v. WEST BENGAL GOVT. PENSIONERS ASSOCIATIONS (2002 AIR SCW 112)

So far as the first judgment cited above is concerned, it is held therein:
"Another submission made in this regard is that members of the association having opted for the first package it does not lie in their mouth to resile from the terms of the package. Learned counsel rightly submits that one cannot blow hot and cold at the same time; or approbate and reprobate simultaneously. There being two packages, a third package could not have been formulated by the High Court giving best of the terms of the two packages. It is financially contended that in so far as denial of gratuity is concerned, no grievance can be made by the association in as much as aided colleges teachers, whose age of retirement is 60 years cannot be said to be similarly situated to Government teachers who retired at the age of 58 years."

15. So far as the second judgment cited above is concerned, it is held therein:
"It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and

unjust. The settlement has to be accepted or rejected as a whole."

16. So far as the third judgment cited above is concerned, it is held therein:
"The compassionate gratuity is different from the gratuity amount payable under the Act. Office memorandum dated 27.10.1997 relied upon by the petitioners categorically provides that those orders apply to Central Government employees governed by the CCS (Pension) Rules, 197 2. Further, the Fifth Pay Commission's recommendations are applicable to Central Government employees only and are not made applicable to the employees of the respondent Bank. Thus looking to the various aspects, the instant petitions are devoid of merit and are dismissed."

So far as the last judgment cited above is concerned, following the earlier judgment reported in UNION OF INDIA v. P.N. MENON (1994 AIR SCW 1985), it is held as under:

"Similarly, an Office Memorandum introduced a scheme to treat a portion of the dearness allowance as pay in respect of government servants, who retired on or after 30.9.1977. This was challenged as being discriminatory vis-a-vis those who had retired prior to 30.9.1977. The challenge was negatived because:
Fixing 30.9.1977 as the cut-off-date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level was at 272, appears to have been taken on the basis of the recommendation of the Third Pay Commission. As such it cannot be held that the cut-off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits."

On such arguments, the learned counsel for the respondent would seek to dismiss all the above writ petitions with costs.

17. In consideration of the facts pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, the common prayer in all the above writ petitions of the petitioners is to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the second proviso to Regulation 46 of Bank of Baroda Officers' Service Regulations 1979 as amended on 19.9.19 96 and Indian Overseas Bank Officers Service Regulations, 1979 as amended on 7.8.1996, respectively, quash the same and consequently direct the respondent to calculate the pay gratuity as paid to those officers, who retired on or after 1.11.1994.

18. It is relevant to extract the second proviso to Regulation 46 of the Bank of Baroda Officers' Service Regulations 1979 as amended on 19.9.1996 and Indian Overseas Bank Officers Service Regulations, 1979 as amended on 7.8.1996, respectively. It is:

"Provided further that pay for the purpose of Gratuity for an officer who

ceased to be in service during the period 1.7.1993 to 30.10.1994 shall be with regard to scale of pay as specified in sub-regulation (1) of regulation 4."

19. Needless to mention, the second proviso to regulation 46 as extracted herebefore could be appreciated only in the context of regulation 4(1), since the import of the second proviso to regulation 46 is for the purpose of gratuity for an officer who ceased to be in service during the period 1.7.1993 to 30.10.1994, shall be with regard to the scale of pay as specified in sub-regulation (1) of regulation 4, and hence it has also become incumbent on the part of this Court to extract Regulation 4(1), which reads as follows:

"On and from 1.11.1987, the scales of pay specified against each grade shall be as under:
GRADE AND SCALES OF PAY:
(a) TOP EXECUTIVE GRADE
Scale VII Rs.6400-150-7000
Scale VI Rs.5950-150-6550

(b) SENIOR MANAGEMENT GRADE:

Scale V Rs.5350-150-5950
Scale IV Rs.4520-130-4910-140-5050-150-5350

(c) MIDDLE MANAGEMENT GRADE:

Scale II Rs.4020-120-1260-130-4910
Scale II Rs.3060-120-4260-130-4390

(d) JUNIOR MANAGEMENT GRADE:

Scale I Rs.2100-120-4020."

20. For instance, the case of the petitioner in W.P. No.4082 of 2000 is that on his retirement, he was paid gratuity of 15 months last drawn basic pay for 30 years with an addition of ½ month last drawn basic pay for every completed year of service after 30 years i.e. he received 16 and 3/12 months and 22 days last drawn basic pay in terms of the rules of the IOB Staff Gratuity Fund and Regulation 46 of IOB Officers' Service Regulation with the minimum of Rs.1 lakh as under Rule 8(i)(i) of the Payment of Gratuity (Central) Rules, 1972. It is the case of this petitioner that the arrears of basic pay, etc. were paid to him after his retirement in 1994, and consequent to the revision effective from 1.7.1993, particularly as far as his basic pay was concerned, the last drawn basic pay after the revision was Rs.9,430/- as against the pre-revised basic pay of Rs.4,650/-. This petitioner would submit that on his retirement, he was paid a gratuity of Rs.1 lakh, but on revision effective from 1.7.1993, his last drawn basic pay stood at Rs.9,430/- and as such, he is entitled to as under:
Gratuity payable after revision
Rs. 9430 x 32/2 + 9430 x 3/12 x ½ + 22 days

= Rs.1,52,345/=
Arrears of balance payable Rs.1,52,345 – Rs.1,00,000
= Rs.52,345/=

Hence, the petitioner's case is that he is entitled to the disbursement of Rs.52,345/= being the balance (arrears) of gratuity together with interest due thereon. Similarly, it is the same demand of all the other petitioners concerned with all the above writ petitions and they would also pray for such reliefs depending upon their individual cases.

21. On the contrary, on the part of the respondent Banks, it would be argued that all the above petitioners have retired between 1.7.1993 and 31.10.1994 and they have already received their terminal benefits including gratuity without any protest as per the then existing rules of the Bank and as per the terms and conditions of the salary settlement. It would further be argued on the part of the respondents that the service regulation was amended by the Board of Directors of the respondent Banks by resolution dated 17.8.1996 and in consultation with the Reserve Bank of India and with previous sanction of the Union of India and that the gratuity was settled as per the salary revisional agreement entered into between the Indian Bank' Association in which the petitioners are the members and the management, which is binding on the petitioners.

22. It would further be argued that the employees are categorised as workmen and Officer employees; that the service conditions of the officer employees are governed by the service regulations framed and promulgated in exercise of power conferred by Section 19 r/w. 12(2) of Act, 1970 effective from 1.7.1979 in respect of the respondent Banks. Extracting Regulation 53 and 46(2), the respondent would argue that the computation of the gratuity of the Officers who were eligible during the period 1.7.1993 to 31.10.1994 is as per the pay drawn by them prior to revision of the scale of pay, which came into effect from 1.7.1993; that the respondent Banks fixed different cut-off dates for entitlement of various perquisites pursuant to wage revision and since the petitioners retired from the respondent Banks between 1.7.1993 and 31.10.1994, they are eligible for gratuity as per the prerevised scales, which the petitioners have accepted and now they cannot come forward to either challenge or seek to quash any of the provisions of the regulation in piecemeal or in strips, as it has been emphasised in the judgments of the Apex Court.

23. In the above circumstances, as held in AIR 1994 SC 2311 supra, the respondent Bank fixed norms for those who retired between 1.7.1993 and 31.10.1994, agreeing which the petitioners have accepted then and there the gratuity became payable in accordance with the then existing rules and regulations and as held in the judgment reported in AIR 1977 SC 322, it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad.... and that the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole. It is not the case of the petitioners challenging the entire agreement entered into between themselves or the respondent management and they cannot pray for any relief in piecemeal or in bits as held by the

Apex Court.

24. As it has been held in the other two judgments cited on the part of the respondent Banks supra, the compassionate gratuity is different from the gratuity amount payable under the Act and that the cutoff date fixed by the respondents, cannot be held to be arbitrary in this case.

25. In all respects, studying the cases of the petitioners from various angles, especially from the view of the propositions held by the Apex Court, in any manner, the second proviso to regulation 46 of the Bank of Baroda Officers' Service Regulations 1979 as amended on 19.9 .1996 and Indian Overseas Bank Officers Service Regulations, 1979 as amended on 7.8.1996, respectively, could be held either unreasonable or arbitrary or irregular or illegal, and therefore, there is absolutely no necessity to quash the same, nor to issue direction to the respondents as it is prayed for by the petitioners in all the above writ petitions.

In result, all the above writ petitions fail and they are dismissed as such.

Consequently, WPMP Nos.6265 and 6279 of 2000 are also dismissed.

However, in the circumstances of the case, there shall be no order as to costs.

Index:Yes.
Internet:Yes.
gs.
30.08.2002

To
1. The Chairman & Managing Director,
Bank of Baroda,
No.03, Walchand Hirachand Marg,
Ballard Pier,
Mumbai – 400 038.

2. The Chairman & Managing Director,
Indian Overseas Bank,
IOB Central Office,
762, Anna Salai,
Chennai- 600 002.

W.P.No.7365 of 1999,
etc. batch